



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/803,520

03/17/2004

Andrew Fraser

040225-000000US

5488

20350 7590 04/10/2009  
TOWNSEND AND TOWNSEND AND CREW, LLP  
TWO EMBARCADERO CENTER  
EIGHTH FLOOR  
SAN FRANCISCO, CA 94111-3834

EXAMINER

PHAM, HUNG Q

ART UNIT

PAPER NUMBER

2159

MAIL DATE

DELIVERY MODE

04/10/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/803,520	<b>Applicant(s)</b> FRASER ET AL.	
	<b>Examiner</b> HUNG Q. PHAM	<b>Art Unit</b> 2159	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,6,10-21,27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,6,10-21,27 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

Art Unit: 2159

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Group I which corresponds to claims 1, 6, 10-21, 27 and 28 in the reply filed on 10/28/2008 is acknowledged.

### ***Response to Arguments***

Applicant's arguments with respect to the rejection under 35 U.S.C. § 102(b) have been considered but are moot in view of the new ground(s) of rejection.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: *a similar personal construct scores* (Claim 1, Line 19).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.**

Regarding claim 1, the underlined limitation *the analysis engine analyses responses made by the user... to generate a recommendation for the user related to an item based on which users have a similar personal construct scores* was not described in the Specification. According to the Specification, responses are analyzed (Page 32 -- Lines 10-28). However, the Specification does not disclose the recommendation is based on which users have a similar personal construct scores.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1, 6, 10-21, 27 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Rebane [US 6,662,192 B1].**

Regarding claim 1, Rebane teaches a data management system for identifying patterns in data related to an item for which a recommendation may be provided from the system to a user, the system comprising a host computer system having:

*a construct repository configured to retain a plurality of construct pair reference sets, each construct pair reference set comprising at least a first descriptive term and a second descriptive term, the first descriptive term and the second descriptive term selected according to personal construct theory to represent contrasting*

Art Unit: 2159

*opinions* (As shown in FIG. 1a (Col. 8 -- Line 61→Col. 9 -- Line 35), the disclosed survey form with multiple reference pairs as *a plurality of construct pair reference sets* is retained in the host server as *a construct repository*. The disclosed survey questionnaire comprises *at least a first descriptive term*, e.g., “Ease of Ordering”, *and a second descriptive term*, e.g., “How Satisfied Were You?”, *the first descriptive term and the second descriptive term selected according to personal construct theory*, e.g., “Ease of Ordering” and “How Satisfied Were You?” are selected according to the theory that products and services may be evaluated based on defined attributes such as satisfaction with quality, price, durability...(Col. 8 -- Lines 23-30), and the purpose is *to represent contrasting opinions*, e.g., as shown in FIG. 1a, customers have different opinions in “Ease of Ordering” according to different ratings) ;

*a graphical user interface configured to display a user-selectable control related to a construct pair reference set of the plurality of construct pair reference sets* (As show in the survey form of FIG. 1, *a user-selectable control related to a construct pair reference set of the plurality of construct pair reference sets*, e.g., the user selectable 1-10 rating related to “Ease of Ordering” and “How Satisfied Were You?”, is displayed) *and further configured to receive a user’s opinion selected between the first descriptive term and the second descriptive term* (As shown in FIG. 1a, *a user’s opinion selected between the first descriptive term and the second descriptive term*, e.g., the selecting of 1-10 rating between “Ease of Ordering” and “How Satisfied Were You?”, is received), *the graphical user interface further configured to store in the construct repository the received user opinion for the construct pair reference set* (Col. 9 -- Lines 35-39); and

*an analysis engine configured to analyze relationships among a plurality of received user opinions for construct pair reference sets retrieved from the construct repository* (FIGS. 5a-c, Col. 16 -- Lines 42-53) *in which the analysis engine analyses responses made by the user using a statistically based process* (Col. 15 -- Line 30→Col. 16 -- Line 5) *to determine which other users have a similar personal construct* (As shown in FIG. 6a-b, users are grouped according to response kinds, e.g., “Very Low Satisfaction, “Low

Art Unit: 2159

Satisfaction"...) *and to generate a recommendation for the user related to an item based on which users have a similar personal construct scores* (FIG. 18, Col. 33 -- Lines 17-51).

Regarding claim 6, Rebane teaches all of the claimed subject matter as discussed above with respect to claim 1, Rebane further discloses *the graphical user interface is configured to receive the user's opinion about the aspect of the item in a number of discrete selectable steps within a range between the first descriptive term and the second descriptive term, that number of steps being referred to as a "mesh"* (FIG. 1D).

Regarding claim 10, Rebane teaches all of the claimed subject matter as discussed above with respect to claim 1, Rebane further discloses *the user can input a value representative of their opinion by adjustment of a position of a control provided by the graphical user interface* (FIG. 1d).

Regarding claim 11, Rebane teaches all of the claimed subject matter as discussed above with respect to claim 1, Rebane further discloses *the results of the analysis are further used to deduce a set of information items of interest to a particular user* (FIG. 1d and 18).

Regarding claim 12, Rebane teaches all of the claimed subject matter as discussed above with respect to claim 1, Rebane further discloses *the system executes on a server that communicates with a user over a network link* (FIG. 3, Col. 11 -- Lines 1-30).

Regarding claim 13, Rebane teaches all of the claimed subject matter as discussed above with respect to claim 1, Rebane further discloses *a user data input component that executes on a remote host system* (FIG. 1D, Col. 8 -- Line 61→Col. 9 -- Line 39).

Art Unit: 2159

Regarding claim 14, Rebane teaches all of the claimed subject matter as discussed above with respect to claim 13, Rebane further discloses *the data input component is represented in the display generated by a web browser* (FIG. 1D, Col. 8 -- Line 61→Col. 9 -- Line 39 and Col. 16 -- Lines 23-29).

Regarding claim 15, Rebane teaches all of the claimed subject matter as discussed above with respect to claim 13, Rebane further discloses *the data input component is generated by an applet that is downloaded to the remote host from the server* (Col. 12 -- Lines 5-23).

Regarding claim 16, Rebane teaches all of the claimed subject matter as discussed above with respect to claim 1, Rebane further discloses *the construct pair reference set is obtained through use of a repertory grid in accordance with personal construct theory* (FIG. 1a and Col. 8 -- Lines 23-30).

Regarding claim 17, Rebane teaches all of the claimed subject matter as discussed above with respect to claim 1, Rebane further discloses *incomplete data is processed by matching those parts of the data that are present with characteristics of existing data* (FIG. 6a).

Regarding claim 18, Rebane teaches all of the claimed subject matter as discussed above with respect to claim 17, Rebane further discloses *the incomplete data is subject to discriminant analysis* (FIG. 6a, Col. 14 -- Lines 2-12).

Art Unit: 2159

Regarding claim 19, Rebane teaches all of the claimed subject matter as discussed above with respect to claim 1, Rebane further discloses *data is subject to a process of linearisation prior to its being analysed* (Col. 14 -- Lines 2-12).

Regarding claim 20, Rebane teaches all of the claimed subject matter as discussed above with respect to claim 19, Rebane further discloses *the process of linearisation includes conversion of non-numeric data to a numeric form* (FIG. 1d).

Regarding claim 21, Rebane teaches all of the claimed subject matter as discussed above with respect to claim 1, Rebane further discloses *users are the customers of a business and the output includes predictive information as to the future purchasing behaviour of the customers* (Col. 33 -- Lines 63-67).

Regarding claim 27, Rebane teaches all of the claimed subject matter as discussed above with respect to claim 1, Rebane further discloses *the item is selected from one of a person, a product, a service, a topic, a concept, an event, and an experience* (Col. 33 -- Lines 18-33).

Regarding claim 28, Rebane teaches all of the claimed subject matter as discussed above with respect to claim 1, Rebane further discloses *the user-selectable control is configured to have a discrete number of settings for receiving the user's opinion about the aspect of the item* (FIG. 1d).



Art Unit: 2159

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUNG Q. PHAM whose telephone number is 571-272-4040. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JAMES K. TRUJILLO can be reached on 571-272-3677. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you

Art Unit: 2159

would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HUNG Q. PHAM/  
Primary Examiner, Art Unit 2159

HUNG Q. PHAM  
Primary Examiner  
Art Unit 2159

April 8, 2009